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In His Charge to Jury, Judge Explains Elements of Offenses To Be Considered

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Rockingham County Superior Court Judge Douglas Gray, in instructing the jurors deliberating the fate of Pamela Smart in her accomplice-to-murder and conspiracy-to-commit-murder trial in the shooting death of her husband, told the jurors that the state must prove beyond a reasonable doubt each and every element of the offenses in order for them to reach a guilty verdict.

If they find that the state has not proved an element or part of the law governing an offense, Gray instructed them that they are to return a verdict of innocence.

He also told them that a "reasonable doubt" as defined by the New Hampshire Supreme Court is not a "frivolous or fanciful doubt" nor one that can be easily explained away.

In his instructions, Gray reminded jurors that Smart, 23, is accused of three offenses: Conspiracy to commit murder, accomplice to first-degree murder and tampering with a witness.

In great detail, Gray instructed the jurors that in order to find Smart guilty of conspiracy to commit murder in the May 1 shooting death of her husband, Gregory Smart, 24, in their Derry condominium, they must unanimously agree the state proved beyond a reasonable doubt the three elements of the offense.

He explained that a person is guilty of conspiracy if he agreed

with one or more persons to commit or cause the commission of the crime. The state, he said, must prove that the defendant acted purposely, agreed with one or more individuals to commit or cause the commission of murder and that an overt act was committed by one or more of the co-conspirators.

On the accomplice to first-degree murder charge, Gray explained that the state must first prove beyond a reasonable doubt that the crime of first-degree murder occurred. It doesn't matter, he told the jurors, that William Flynn, now 17, pleaded guilty to second-degree murder, a lesser charge, in the shooting death of Gregory Smart.

First-degree murder, Gray said, is when an individual caused the death of another and acted purposely, with premeditation and deliberation.

The jurors, he said, can consider the conduct of the "actor" (Flynn), whether the murder was brutal, if there were multiple wounds and if, after the homicide, whether the actor attempted to conceal his act.

The jurors then must consider whether Pamela Smart was an accomplice to first-degree murder. The state again must prove beyond a reasonable doubt that the 23-year-old former media director for SAU 21 in Hampton helped plan or commit the murder.

The state, Gray read from the indictment, alleges Pamela Smart advised Flynn to wear black clothes, to wear gloves so

as not to leave any fingerprints, to make it appear the murder occurred during a burglary, gave Flynn directions to her home and absented herself from the condominium on the night of the murder and on another evening when a failed murder attempt was made.

Gray explained that a person is guilty of tampering with a witness if believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to testify or inform falsely; withhold any testimony, information, document or thing.

The state alleges Smart told Cecelia Pierce, her then 16-year-old media intern who secretly recorded their conversations with a body wire, that she would be better off lying to police if they questioned her.

He also told the jurors that while transcripts of the taped conversations would be available to them in the jury deliberation room, that the tapes were the evidence and the transcripts were not. He pointed out that if the transcript differed from the tapes, that they were to go by the tape recordings.

The jurors were also told that they were not to concern themselves with punishment, that that was the responsibility of the court.

Smart faces life imprisonment without parole on the two murder-related charges and 3½ to 7 years on the Class B felony witness tampering count.